

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4149 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

SALIM ISMAIL DIWAN

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR.HL JANI,AGP, for the Respondents.
RULE UNSERVED for Respondent No. 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 06/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 3-12-97 passed by the Police Commissioner, Surat City under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of his detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on two criminal cases filed against the petitioner being C.R.No. 350/96 by Varachha Road Police Station for the alleged offences punishable under Sections 323, 324, 394 and 114 of the IPC and Section 135 of the Bombay Police Act and C.R.No. 248/97 by Mahidharpura Police Station for the alleged offences punishable under Sections 143, 147, 148, 149, 302 and 364 of the IPC and Section 135 of the Bombay Police Act. Over and above these two criminal cases, which are pending trial, the detaining authority has also placed reliance on the three statements of the witnesses who were the victims of the incidents of 25-6-97, 2-7-96 and 16-11-97 when it is alleged that the petitioner had tried to extort money from them and on their refusal to oblige the demand, they were beaten with the result people gathered; the petitioner rushed with the deadly weapons towards the crowd with the result the crowd dispersed and there was an atmosphere of reign of terror. Considering this material, the detaining authority recorded the satisfaction that the petitioner is a dangerous person within the meaning of Section 2 (c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against him, which has been challenged by the petitioner by way of this petition.

At the time of hearing of this petition, Ms. Patel, learned Advocate for the Petitioner raised number of contentions. However, it is not necessary to deal with all of them since this petition is required to be allowed on the ground that there was delay in passing the order of detention. The Supreme Court in P.N. Paturkar vs S. Rammurthi AIR 1994 SC 656 set aside the order of detention on the ground that the order of detention was passed after a period of five months and eight days. In the instant case, C.R.No. 350/96 was registered on 30-11-96 and the petitioner was arrested on 2-12-96. However, he was released on bail on 4-1-97. The petitioner was again arrested on 19-7-97 in connection with C.R.No. 248/97 registered on 5-7-97. Admittedly the order of detention was passed on 3-12-97. Thus there was a delay of about five months in passing the order of detention after registration of the second criminal case against the petitioner. The statements of the witnesses for the alleged incidents were recorded after the petitioner was released on bail in the criminal cases and immediately prior to the date of the detention. Considering these facts on record, I am of the view that

the case on hand is squarely covered by the decision of the Supreme Court in P.N.Paturkar's case (supra).

In the result, this petition is allowed. The order or detention dated 3-12-1997 is quashed and set aside. The detenu Salim Ismail Diwan is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute to the aforesaid extent with no order as to costs.

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